
Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Albino Ortega and Maria Juarez)	File Number: EB-08-PO-0079
)	
Licensee of AM Station KIGO)	NAL/Acct. No.: 200832920003
St. Anthony, Idaho)	FRN: 0011338407
Facility ID No. 22622)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: July 31, 2008

By the Resident Agent, Portland Resident Agent Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that on April 1 and April 2, 2008, respectively, Albino Ortega and Maria Juarez, licensees of AM radio station KIGO in St. Anthony, Idaho, apparently willfully and repeatedly violated Section 73.49 of the Commission's Rules ("Rules")¹ by failing to maintain an effective locked fence surrounding KIGO's antenna. We conclude, pursuant to Section 503(b) of the Communications Act of 1934, as amended ("Act"),² that Albino Ortega and Maria Juarez are apparently liable for a forfeiture in the amount of seven thousand dollars (\$7,000).

II. BACKGROUND

2. On September 27, 2006, the Enforcement Bureau's Portland Resident Agent Office ("Portland Office") issued a Notice of Apparent Liability For Forfeiture ("NAL")³ in the amount of \$7,000 to Albino Ortega and Maria Juarez for apparent willful and repeated violation of Section 73.49 of the Rules⁴ by failing to enclose the KIGO antenna tower within an effective locked fence or other enclosures. Ortega and Juarez filed a response ("*Response*") on October 25, 2006, admitting the violation of Section 73.49, providing evidence that an effective fence now enclosed the antenna structure, and requesting that the forfeiture amount be reduced based on their inability to pay. They also provided a statement of the corrective action taken by sending photographs of the newly built locked fence and the displayed ASR Number at the gate of the fence. On May 4, 2007, the Western Region, Enforcement Bureau, ("Region") issued a *Forfeiture Order* assessing a \$500 forfeiture against Ortega and Juarez for violation of Section 73.49 of the Rules.⁵ The Region reduced the forfeiture amount proposed by the Portland Office based on Ortega and Juarez inability to pay, supported by three years of tax returns. Ortega and Juarez later paid the

¹ 47 C.F.R. §73.49.

² 47 U.S.C. § 503(b).

³ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200632920003 (Enf. Bur., Western Region, Portland Resident Agent Office, released September 27, 2006).

⁴ 47 C.F.R. § 73.49.

⁵ *Albino Ortega and Maria Juarez*, 22 FCC Rcd 8515 (EB 2007) ("*Forfeiture Order*").

\$500 forfeiture.⁶

3. On April 1, 2008, an agent from the Portland Office re-inspected KIGO's antenna tower site in Rigby, Idaho, and found that the gate of the base fence surrounding KIGO antenna tower was open. The agent also observed that there was no protective property fence surrounding the KIGO antenna site.

4. On April 2, 2008, the Portland returned to the KIGO antenna site and again found that found that the gate of the base fence surrounding KIGO antenna tower was open. The agent also observed that there was no protective property fence surrounding the KIGO antenna site.

III. DISCUSSION

5. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term "willful" as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.⁷ The term "repeated" means the commission or omission of such act more than once or for more than one day.⁸

6. Section 73.49 of the Rules states that antenna towers having radio frequency potential at the base (series fed, folded unipole, and insulated base antennas) must be enclosed within effective locked fences or other enclosures.⁹ The KIGO AM antenna tower is series fed. In adopting the *Report and Order* promulgating the most recent amendment of Section 73.49, the Commission stated that "a fencing requirement is necessary to protect the general public."¹⁰ On April 1 and April 2, 2008, the Portland Office inspected the KIGO antenna tower site and found that the gate of the base fence surrounding KIGO's antenna tower was open and that there was no protective property fence at the site beyond the base fence. Ortega and Juarez were aware of the base fence requirements for the KIGO antenna tower, given their *Response* to the Portland Office's earlier *NAL*. Therefore, the violation on April 1 and April 2, 2008, was willful. The violation occurred on more than one day, therefore it was repeated. Based on the evidence before us, we find that Albino Ortega and Maria Juarez apparently willfully violated Section 73.49 of the Rules by failing to maintain an effective locked fence surrounding KIGO's antenna tower.

7. Pursuant to *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, ("Forfeiture Policy Statement"), and Section 1.80 of the Rules, the base forfeiture amount for failing to maintain an effective locked fence is seven thousand dollars is \$7,000.¹¹ In assessing the monetary forfeiture amount, we must also take into account the

⁶ See 47 U.S.C. § 504(c).

⁷ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

⁸ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'repeated', when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

⁹ 47 C.F.R. § 73.49.

¹⁰ *Review of the Technical and Operational Regulations of Part 73, Subpart A, AM Broadcast Stations*, 59 Rad. Reg. 2d (Pike & Fischer) 927, ¶6 (1986) ("Report and Order").

¹¹ 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. §1.80.

statutory factors set forth in Section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, and history of prior offenses, ability to pay, and other such matters as justice may require.¹² Applying the *Forfeiture Policy Statement*, Section 1.80, and the statutory factors to the instant case, we conclude that Albino Ortega and Maria Juarez are apparently liable for a \$7,000 forfeiture.

IV. ORDERING CLAUSES

8. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311, 0.314 and 1.80 of the Commission's Rules, Albino Ortega and Maria Juarez are hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of seven thousand dollars (\$7,000) for violations of Section 73.49 of the Rules.¹³

9. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Commission's Rules within thirty days of the release date of this Notice of Apparent Liability for Forfeiture, Albino Ortega and Maria Juarez **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

10. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.¹⁴ Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Albino Ortega and Maria Juzrez will also send electronic notification on the date said payment is made to WR-Response@fcc.gov.

11. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, Portland Resident Agent Office, PO Box 61469, Vancouver, Washington, 98666-1469 and must include the NAL/Acct. No. referenced in the caption. An electronic copy shall be sent to WR-Response@fcc.gov.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the

¹² 47 U.S.C. § 503(b)(2)(E).

¹³ 47 U.S.C. § 503(b), 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 73.49.

¹⁴ See 47 C.F.R. § 1.1914.

Federal Communications Commission

financial documentation submitted.

13. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Albino Ortega and Maria Juarez.

FEDERAL COMMUNICATIONS COMMISSION

Binh Nguyen
Resident Agent
Portland Resident Agent Office
Western Region
Enforcement Bureau